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IN THE

Supreme Court of the United States

October Term, 1968
No. 687

EVELLE J. YOUNGER, District Attorney of the County of Los Angeles, State of California,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

SIRHAN BISHARA SIRHAN,

Real Party in Interest.

On Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION.

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1. *The order in question is not unsupported by any showing that the publicity proscribed by the order would infringe upon the defendant's right to a fair trial.* (Petn. for Cert. p. 8.) At the time the order was made there had already been substantial publicity. The newsworthy nature of the case is such that it was and is a certainty that the publicity would continue and would likely be prejudicial to the defendant unless judicially controlled as recommended by this Court in *Sheppard v. Maxwell,* (1966) 384 U.S. 333 [16 L. Ed.

2d 600, 86 Sup. Ct. 1507]. A further consideration is that in this case the prejudicial effect of pretrial publicity cannot be avoided or alleviated by change of venue and sequestration of jurors and witnesses because the case is one of national and state-wide interest. In making the order in question the trial court relied on the recommendations of the American Bar Association Project on Minimum Standards for Criminal Justice (Reardon Report). It is also believed that the order is supported by the United States Judicial Conference Report of the Committee on the Operation of the Jury System on the "Free Press-Fair Trial" Issue (Kaufman Report), which specifically recommends special orders in widely publicized and sensational cases.

2. *The order in question does not totally suppress the public's only possible sources of information.* (Petn. for Cert. p. 3.) The order, by its terms, does not restrict all extrajudicial statements as it expressly follows the Reardon Report in specifying the types of information that can be disseminated. Substantially the same recommendations are made in the Kaufman Report. The order is also not an absolute restriction of other extrajudicial statements in that the District Attorney, as well as any other interested party, may apply to the court for permission to disclose specified information, at which time the court will rule after hearing the defendant's objection, if any, that the disclosure would be prejudicial. The order, of course, does not restrict publicity of proceedings had in open court. The order also does not reach or deal with the separate problem of whether and to what extent to restrict publication of proceedings during trial outside the presence of the jury.

3. *The order in question does not restrain freedom of the press.* The order proscribes the making of certain extrajudicial statements by attorneys, parties, witnesses, grand jurors, court personnel, police, and other public officials. It is not directed to the news media.

Respectfully submitted,

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